

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, AHMEDABAD

सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.135/Ahd/2022  
निर्धारण वर्ष / Assessment Year : 2017-18

M/s.Riddhi Siddhi Jewellers Pvt.Ltd. 41/42/2, Khodiar Chowk Opp: Panchmukhi Hanmanji Temple Paldigam, Ahmedabad-390 007	<u>बनाम/ v/s.</u>	The Pr.CIT-3 Ahmedabad - 380 015
स्थायी लेखा सं./PAN: AAFCR 1736 C		

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Tushar Hemani, Sr. Advocate & Shri Parimalsinh B. Parmar, AR
Revenue by :	Shri Ritesh Parmar, CIT-DR

सुनवाई की तारीख/Date of Hearing : 17/10/2024  
घोषणा की तारीख /Date of Pronouncement: 30/10/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal has been filed by the assessee challenging the order of the Principal Commissioner of Income Tax (hereinafter referred to as "PCIT") passed under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated 25-03-2022 for the Assessment Year (AY) 2017-18. The PCIT invoked his revisionary powers and set aside the order of the Assessing Officer (hereinafter referred to as "AO") framed under Section 143(3) of the Act dated 20.12.2019.

**Facts of the Case:**

2. The assessee filed its return of income for AY 2017-18 on 03.12.2018, declaring total income at Rs.1,33,94,230/-. The return was selected for scrutiny, and notice under Section 143(2) of the Act was issued on 10.08.2018. During the scrutiny proceedings, the AO issued multiple notices under Section 142(1) of the Act calling for various details, particularly regarding the abnormal increase in cash deposits during the demonetization period (08.11.2016 to 30.12.2016). The assessee had deposited Rs.10,39,40,933/- in cash on 08.11.2016. The assessee explained that these deposits arose from cash sales made to 640 customers on 08.11.2016, with each transaction being below Rs.2,00,000/-, thereby not attracting any mandatory requirement for customer details like PAN or address. The assessee furnished sales invoices, cash books, and other details to substantiate its claim. After conducting an inquiry, the AO accepted the assessee's explanation and framed the assessment under Section 143(3) on 20.12.2019 without making any additions to the declared income.

2.1. The PCIT initiated revisionary proceedings under Section 263, issuing a show-cause notice to the assessee on 04.03.2021 and 05.01.2022. The PCIT expressed dissatisfaction with the inquiry conducted by the AO and raised concerns regarding the genuineness of the sales claimed by the assessee. The PCIT noted the following key points, where the AO had failed to conduct proper inquiries:

- (a) The AO did not verify the genuineness of the claim that sales were made to 640 people on 08.11.2016.

(b) The AO did not investigate how all sales were structured below Rs.2,00,000 each, avoiding the requirement to report PAN details.

(c) The AO did not cross-examine the buyers or verify their identities.

(d) No attempt was made to review the CCTV footage of the showroom to validate whether such a large volume of sales could have occurred in a span of a few hours (between 9 PM and midnight on 08.11.2016).

2.2. Based on these perceived shortcomings, the PCIT concluded that the AO's order was both erroneous and prejudicial to the interests of the revenue. Accordingly, the assessment order was set aside, and the AO was directed to reframe the assessment after making proper inquiries and verification.

3. Aggrieved by the order of the PCIT, the assessee is in appeal before us with following grounds of appeal:

1. *On the facts & in the circumstances of the case it is most respectfully submitted that the Ld. Principal Commissioner of Income Tax- 3 has erred in Law and on Facts in holding that the order passed u/s 143(3) of The Income Tax Act, 1961 dated 20/12/2019 as erroneous and prejudicial to the interest of revenue and directing the Ld. Assessing Officer to make fresh assessment, by passing the Order U/s 263 of The Income Tax Act, 1961 dated 25/03/2022.*
2. *On the facts & in the circumstances of the case it is most respectfully submitted that the Ld. Principal Commissioner of Income Tax-3 has erred in Law and on Facts by holding that cash deposit of Rs.9,12,00,000/- on 15/11/2016 did not come from cash sales of Rs.10,39,40,933/- made on 08/11/2016 irrespective of the fact that said cash deposit was made from cash sales made on 08/11/2016 and the appellant had submitted all relevant documents during the course of assessment u/s 143(3) of the I.T. Act, 1961.*
3. *On the facts & in the circumstances of the case it is most respectfully submitted that the Ld. Principal Commissioner of Income Tax-3 has erred in Law and on Facts by directing the Assessing Officer to make the inquiry in respect of genuineness of cash sales and source of cash of Rs.10,39,40,933/- deposited in Bank during demonetization period by the appellant without appreciating the fact that all relevant*

*evidences during the assessment u/s 143(3) of the I.T. Act, 1961 were duly submitted.*

4. *Your appellant craves leave to add, to alter or to amend the grounds of appeal if occasion arises.*

4. The Ld. Sr. Counsel for the assessee made detailed submissions before us, contesting the validity of the order passed by the PCIT under Section 263 of the Act. These submissions anchored on the grounds that the twin conditions necessary to invoke Section 263 of the Act are not satisfied, the issue in question was duly examined by the Assessing Officer (AO) during the original assessment, and where two views are possible, the PCIT cannot substitute his own opinion. Additionally, the AR (Authorized Representatives - AR) contended that inadequacy of inquiry cannot justify revision under Section 263 and that, even on merits, no addition was warranted.

4.1. The AR emphasized that the AO conducted a thorough and detailed inquiry into the assessee's affairs during the assessment proceedings. The AR stated that case was selected for scrutiny, primarily due to the significant cash deposits made during the demonetization period. The AR further submitted that multiple notices were issued by the AO under Sections 143(2) and 142(1) of the Act, requesting detailed explanations regarding the large cash deposits and the nature of the cash sales. The AR pointed out that the inquiry process spanned over six months, during which the assessee fully cooperated with the AO by submitting all necessary documents and explanations. These submissions included:

- Sales invoices corresponding to the cash sales made on 08.11.2016.

- Cash books, stock records, and bank statements reflecting the cash deposits.
- VAT returns and other financial documents confirming the veracity of the cash sales.
- Monthly details of Sale and Purchase including opening and closing stock including cash sales.
- Month-wise, quantity-wise, item-wise stock details.
- Details of cash balance
- Details of GP and NP ratio of las 3 years pointing out that the GP for the current year under consideration has increased to 14.98% compared to 5.2% in the previous year.

4.2. The AR also stated that the AO carefully examined these documents and, after considering all relevant evidence, concluded that the cash deposits were legitimate, being the proceeds of cash sales conducted on 08.11.2016.

4.3. The AR submitted that the AO's order was neither erroneous nor prejudicial to the interest of the revenue. It is a settled principle that the revisionary powers under Section 263 of the Act can only be invoked if both conditions – erroneous order and prejudice to revenue – are satisfied. The AR placed reliance on the judgement of Hon'ble Apex Court in case of **Malabar Industrial Co. Ltd. vs. CIT (243 ITR 83) [SC]** where the Apex Court held that for an order to be revised under Section 263 of the Act, the following two conditions must be cumulatively fulfilled:

- The order must be erroneous (involving an incorrect application of law or ignoring relevant facts).
- The order must be prejudicial to the interests of the revenue (leading to a loss of revenue).

4.4. In the present case, the AR contended that the AO had conducted proper scrutiny, issued multiple notices, and gathered comprehensive details from the assessee. Since there was no error in the assessment, and the income had been properly declared and taxed, the first condition was not met.

4.5. The AR further argued that the order was not prejudicial to the revenue, as the income from the cash sales was offered to tax, and there was no evidence that the revenue suffered any loss due to the AO's decision.

4.6. The AR argued that even if two views are possible on the issue at hand, the AO's acceptance of one view does not make the order erroneous. The PCIT cannot invoke Section 263 merely because he holds a different opinion from the AO. The placed reliance on some judicial precedent including in the case of **CIT vs. Kwality Steel Suppliers (395 ITR 1) [SC]** and in the case of **CIT vs. Arvind Jewellers (259 ITR 502) [Guj HC]**.

4.7. The PCIT, in the show-cause notice, implied that the inquiry conducted by the AO was inadequate and that more detailed verification of the cash sales was required. The AR refuted this, arguing that inadequacy of inquiry does not make the order erroneous, and unless there is a complete lack of inquiry, Section 263 of the Act cannot be invoked. The AR placed reliance on judicial precedents including in the case of **CIT vs. Sunbeam Auto Ltd. (332 ITR 167) [Delhi HC]** and in the case of **CIT vs. Anil Kumar Sharma (335 ITR 83) [Delhi HC]**.

4.8. Finally, the AR contended that even if the merits of the issue are examined, no addition to the income is warranted. The cash sales during the demonetization period were genuine, backed by sales invoices, stock registers, and cash books, and the revenue generated from these sales was duly recorded in the books and offered to tax.

4.9. The AR contended that the AO accepted the assessee's explanation that the cash sales during the demonetization period were legitimate and well-documented. Even if the PCIT had reservations about the structuring of sales or timing of deposits, this would not justify invoking Section 263 of the Act since both views are plausible.

4.10. The AR cited various judicial precedents where it was held that as long as the AO has applied his mind and made inquiries, even if not explicitly mentioned in the order, the inquiry cannot be considered inadequate or non-existent. The mere absence of extensive reasoning in the AO's final order does not make the order erroneous. The AO's inquiry into the facts of the case was extensive, and it would be incorrect to term it as perfunctory.

5. The Departmental Representative (DR) supported the order passed by the PCIT, arguing that the AO failed to verify the authenticity of the large cash sales made during the demonetization period. The DR emphasized that the AO did not conduct sufficient inquiry into the cash transactions and that it was critical to verify the identities of the buyers, the structuring of sales, and whether such transactions were genuinely conducted within the time frame claimed.

6. The PCIT, in the show-cause notice (SCN) issued under Section 263 of the Act, questioned the genuineness of the cash sales made by the assessee on 08.11.2016 and the subsequent cash deposits of Rs.9,12,00,000/- on 15.11.2016, raising concerns about the structuring of sales below Rs.2,00,000/- to avoid obtaining PAN details. The PCIT also doubted the timing and volume of sales conducted soon after the demonetization announcement. The assessee submitted that the cash sales were legitimate and recorded in the books of accounts, with corresponding cash deposits duly reconciled with bank statements. The inventory sold was part of the disclosed opening stock, and regular stock statements were submitted to Punjab National Bank, confirming the availability of stock. The assessee further emphasized that the structuring of sales below Rs.2,00,000/- was in full compliance with legal provisions at the time, which did not require PAN details for such transactions. Therefore, the absence of PAN did not imply any wrongdoing. The assessee contended that the PCIT's concerns were speculative and lacked any new material evidence that had not already been scrutinized by the AO during the original assessment. The AR argued that the burden of proof lay on the PCIT to demonstrate the error in the assessment, but no fresh evidence or discrepancies were identified in the SCN. Regarding the timing and volume of sales, the assessee explained that the demonetization announcement led to a nationwide surge in demand for gold, making the sales figures entirely plausible. The assessee further argued that sales were backed by proper documentation, including invoices and stock records, which were thoroughly examined by the AO.

6.1. After thoroughly considering the submissions made by both the parties, and examining the facts and evidence on record, we find that the AO

conducted a comprehensive and detailed inquiry into the assessee's cash sales and cash deposits made during the demonetization period. The assessee responded to multiple notices issued under Sections 143(2) and 142(1) by furnishing all the required documents, including cash books, sales invoices, bank statements, stock records, and VAT returns. The AO scrutinized these documents and accepted the explanation provided by the assessee. The contention that the AO did not conduct a sufficient inquiry is unfounded, as all relevant inquiries were made, and the AO exercised due diligence in framing the assessment order. The assessee provided ample evidence linking the cash deposits of Rs.9,12,00,000 made on 15.11.2016 to the cash sales of Rs.10,39,40,933 conducted on 08.11.2016. The stock sold was part of the opening inventory and was duly reflected in the books and hypothecated to the bank. There is no material on record to suggest that the sales were fabricated or unsubstantiated.

6.2. The judicial precedent in the case of **Malabar Industrial Co. Ltd.(supra)** clearly establishes that for Section 263 of the Act to be invoked, the order must be both erroneous and prejudicial to the interests of the revenue. In the present case, neither of these conditions is satisfied:

- **No Error in the AO's Order:** The AO conducted a comprehensive inquiry, carefully examined the documents, and reached a plausible conclusion based on the facts. There was no incorrect application of law or oversight of relevant facts by the AO. Therefore, the order cannot be termed erroneous.
- **No Prejudice to Revenue:** The income arising from the cash sales was offered to tax, and the revenue suffered no loss. The PCIT has not demonstrated how the assessment order was prejudicial to the interests of the revenue. As the twin conditions are not satisfied, the invocation of Section 263 by the PCIT is invalid.

6.3. Where two views are possible, and the AO has adopted one plausible view after conducting inquiries, the PCIT cannot invoke Section 263 merely because he holds a different opinion. The Hon'ble Supreme Court in the case of *CIT vs. Kwalitiy Steel Suppliers (395 ITR 1) [SC]* and the Hon'ble Gujarat High Court in the case of *CIT vs. Arvind Jewellers (259 ITR 502) [Guj HC]* have established that the revisionary powers of the PCIT cannot be exercised in such a situation. In this case, the AO accepted the assessee's explanation of cash sales and deposits, which was supported by proper documentation. Even if the PCIT harboured doubts about the structuring of sales or the timing of transactions, these concerns do not justify revision under Section 263 of the Act.

6.4. The PCIT suggested that the inquiry conducted by the AO was inadequate, especially with respect to verifying the buyers' identities or conducting forensic analysis of sales records. However, judicial precedents, such as, *CIT vs. Sunbeam Auto Ltd. (332 ITR 167) [Delhi HC]* and *CIT vs. Anil Kumar Sharma (335 ITR 83) [Delhi HC]* make it clear that "inadequate inquiry" does not amount to "no inquiry." As long as the AO has applied his mind to the facts, even if the inquiry is not exhaustive, the order cannot be revised. The AO's inquiry in this case was reasonable and sufficient, and the PCIT cannot challenge the order merely because a more detailed inquiry could have been conducted.

6.5. In conclusion, after a careful review of the submissions, documents, and judicial precedents cited, we hold that the PCIT has failed to demonstrate any valid grounds for invoking revisionary jurisdiction under Section 263 of

the Act. The assessment order passed by the AO under Section 143(3) of the Act was neither erroneous nor prejudicial to the interests of the revenue. The inquiry conducted by the AO was sufficient, and the conclusions drawn were based on a reasonable appreciation of the evidence.

6.6. Therefore, the order passed by the PCIT under Section 263 of the Act is quashed, and the appeal filed by the assessee is allowed.

7. In the result, the appeal of the assessee is allowed.

**Order pronounced in the Open Court on 30 October, 2024 at Ahmedabad.**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-  
(MAKARAND V. MAHADEOKAR)  
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 30/10/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The Pr.CIT-3, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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